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ABSTRACT

This study highlights major legislation addressing campus safety and crime reporting and discusses its impact on a student's right to privacy. The 1974 Family Educational Rights and Privacy Act, commonly referred to as the "Buckley Amendment," was among the first pieces of legislation to address the notion of student privacy and confidentiality. This amendment requires that educational institutions not release identifiable student information without student consent or it will risk losing federal funds. If an institution hides crime statistics under the provisions of the Buckley Amendment, it may not meet the requirements of the Campus Awareness and Campus Security Act of 1990, in which institutions of higher education are required to provide campus crime statistics and describe security procedures. Other federal legislation relates to the disclosure of information about campus crime, and there is proposed legislation that would extend requirements for disclosure of information about campus crime. These provisions receive criticism from privacy advocates, but, in light of the September 11 terrorist attacks, student information has become more accessible under the U.S.A. Patriot Act. Public concern over the balance between privacy and safety will continue to shift, as has been demonstrated by the consequences of September 11. (SLD)

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STUDENT PRIVACY VERSUS CAMPUS SAFETY: HAS RECENT LEGISLATION

COMPROMISED PRIVACY RIGHTS?

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STUDENT PRIVACY AND CAMPUS SAFETY: HAS RECENT LEGISLATION
COMPROMISED PRIVACY RIGHTS?

Introduction

Does the need for security necessitate the sacrifice of individual rights? Is it possible to achieve a balance between privacy and safety? With an increasing number of crimes committed on college campuses, a greater concern has developed for safety among students, parents, faculty, and staff. Advocates for college campus safety and security, as well as the media, have supported and proved instrumental in successfully passing legislation to establish and expand an institution's responsibility for releasing crime reports - bringing to the forefront of legal debate the notion of a student's right to privacy and confidentiality versus student safety. The purpose of this brief paper is to highlight major legislation addressing campus safety and crime reporting, and to discuss its impact on a student's right to privacy.

Student Privacy and Campus Security

Major Legislation

The 1974 Family Educational Rights and Privacy Act (FERPA), commonly referred to as the "Buckley Amendment", was among the first piece of legislation to address the notion of student privacy and confidentiality. In short, the Buckley Amendment requires that educational institutions not release identifiable student information without student consent or risk losing federal funds (Childs, 1998; Overbeck, 1990). However, critics argue that the Buckley Amendment provided colleges and

universities with the means by which they could conceal crime statistics and reports. According to Brienza (1998), "schools across the country may be hiding... their crime statistics to project and image of safety and tranquility at their institutions." Obtaining crime reports generally proved difficult since many institutions considered such information as educational records. This interpretation of the Buckley Amendment would challenge the Crime Awareness and Campus Security Act of 1990, in which institutions of higher education were required to provide campus crime statistics and security procedures (Security on Campus, 2002). The resultant 1992 Buckley Amendment Clarification would specify that campus police and security records are not considered educational records (Security on Campus, 2002). A later act, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998 would clarify and expand the 1990 Campus Security Act by addressing ambiguities and providing further requirements for reporting crime (Security on Campus, 2002).

Additional federal laws would extend requirements for institutions to disclose information concerning campus crime. For example, the 1998 Foley Amendment, which amends the Buckley Amendment, stipulates that a student who has committed a violent act, including non-forcible sex, is no longer afforded federal student privacy protection (Security on Campus, 2002). Consequently, the names of such students are accessible by the public. A similar law addressing sex related crimes, the Campus Sex Crimes Prevention Act of 2000, provides for the collection

and publication of information concerning convicted sexual offenders that are employees or students at an educational institution.

Campus Security Verse Student Privacy and Confidentiality

The passage of the before mentioned federal acts and amendments have received widespread criticism from privacy advocates. It has been argued that in such legislation lays the foundation for laws that will lead to greater intrusion on individual privacy - essentially creating a "slippery slope" by which additional legislation, such as new amendments to FERPA, will increase the ease for accessing student records by individuals or entities outside the institution, namely law enforcement and the media. For instance, an exception to the student privacy protection afforded by FERPA includes an educational institution's requirement to provide directory information (i.e., contact information, name, date and location of birth, previously attended institutions etc.) (American Civil Liberties Union, 2002). Furthermore, colleges or universities may reveal a student's personal information and academic records under emergency situations without judicial order or a subpoena when such information is necessary for the protection of others (American Civil Liberties Union, 2002). Privacy advocates suggest that such stipulations for releasing student records are vague and open for interpretation - thus being an open door for potential abuses, namely from law enforcement. In contrast, safety and security advocates indicate that both the institution and law enforcement must be given additional authority to

protect students, faculty, and staff. Accessing student records are governed by policies and procedures in place for the purpose of accountability (e.g., judicial review and court orders) and to protect personal information.

Nonetheless, in light of the September 11th terrorist attacks, student information has become more accessible under the USA Patriot Act (H.R. 3162). The USA Patriot Act amends FERPA and allows law enforcement officials, under section 507 and 508, to more easily obtain student information. Under authorization from the Attorney General or Secretary of Education, Section 507 allows the release of personal student information to aid in both the prevention and/or investigation of domestic or international terrorism offenses (House Judiciary Democratic Staff, 2001). Section 508 permits law enforcement officials to obtain student statistical data from the U.S. Education Department (House Judiciary Democratic Staff, 2001). However, since FERPA already permits the disclosure of student information under specific conditions (directory information, legally obtained subpoenas, or emergencies), critics indicate that section 507 and 508 has allowed federal investigators and law enforcement officials to obtain personal information under mere suspicion, and without evidence or probable cause.

Conclusion

Legislation that has addressed campus security and student privacy has been shaped and influenced by a variety of factors. Law does not exist in a vacuum and is continually affected by ever-changing political, cultural, economic and social issues.

Public concern over the balance between privacy and safety will continue to shift - as has been demonstrated by the consequences of September 11th. Although a perfect balance is likely an unattainable goal, the ongoing debate between safety and privacy advocates will serve to inform and assist individuals in shaping their own perspectives on this controversial and seemingly ubiquitous issue.

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